

UNITED STATES OF AMERICA)
) Criminal No. 02-438
 v.)
) Filed: 5/21/02
 SHOGO ANDO and)
 MANFRED A. MUELLER,) 15 U.S.C. § 1
)
 Defendants.)

The Grand Jury, in and for the District of New Jersey, sitting in Camden, charges:

OFFENSE CHARGED

(a) SHOGO ANDO and
(b) MANFRED A. MUELLER.

2. Beginning as early as June 1995 and continuing until at least through December 1997, the exact dates being unknown to the Grand Jury, the defendants, SHOGO ANDO and MANFRED A. MUELLER, and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price of carbon cathode block sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendants and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to agree to fix and maintain prices and to coordinate price increases for the sale of carbon cathode block in the United States and elsewhere.

II

MEANS AND METHODS OF THE CONSPIRACY

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in meetings and conversations in Asia and Europe to discuss the prices of carbon cathode block sold in the United States and elsewhere;
- (b) agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of carbon cathode block sold in the United States and elsewhere; and
- (c) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the terms of the above-described agreement.

III

DEFENDANTS AND CO-CONSPIRATORS

5. Defendant SHOGO ANDO is a resident and citizen of Japan. During the period covered by this Indictment, defendant SHOGO ANDO was the President of Nippon Electrode Company, Ltd. (NDK). During the period covered by this Indictment, NDK was a company organized and existing under the laws of Japan and was engaged in the business of manufacturing and selling carbon cathode block to customers worldwide, including customers in the United States.

6. Defendant MANFRED A. MUELLER is a resident and citizen of the Federal Republic of Germany. During the period covered by this Indictment, defendant MANFRED A. MUELLER was a General Manager of VAW Carbon GmbH. During the period covered by this Indictment, VAW Carbon GmbH was a company organized and existing under the laws of the Federal Republic of Germany and was engaged in the business of manufacturing and selling carbon cathode block to customers worldwide, including customers in the United States.

7. Various corporations and individuals not made defendants in this Indictment participated as co-conspirators in the offense charged in this Indictment and performed acts and made statements in furtherance thereof.

8. Wherever in this Indictment reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management,

direction, control or transaction of its business or affairs.

IV

TRADE AND COMMERCE

9. Carbon cathode block is a carbon product with great strength and resistance to heat and chemical reaction. Because of its superior conductive properties, it is commonly used in aluminum smelters or pots in the production of primary aluminum. Cathodes are sold either directly by producers or through subsidiaries or sales agents to aluminum companies in the United States and elsewhere for use in their smelters.

10. Total sales of carbon cathode block in the United States are estimated to be in excess of approximately \$40 million during the term of the conspiracy charged.

11. During the period covered by this Indictment, the defendants and co-conspirators sold a substantial quantity of carbon cathode block in a continuous and uninterrupted flow of interstate and foreign trade and commerce to customers located in states or countries other than the states or countries in which the carbon cathode block was produced.

12. During the period covered by this Indictment, the activities of the defendants and co-conspirators that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

V

JURISDICTION AND VENUE

13. The combination and conspiracy charged in this Indictment was carried out, in part, within the District of New Jersey within the five years preceding the filing of this Indictment.

All in violation of Title 15, United States Code, Section 1.

A True Bill

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